

ADR  
E-FILE

Fred W. Schwinn (SBN 225575)  
 CONSUMER LAW CENTER, INC.  
 12 South First Street, Suite 1014  
 San Jose, California 95113-2418  
 Telephone Number: (408) 294-6100  
 Facsimile Number: (408) 294-6190  
 Email Address: fred.schwinn@sjconsumerlaw.com

Attorney for Plaintiff  
 HORTENSE SALLY YBARRA

FILED  
 JAN 21 2011  
 RICHARD W. WIENING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

99  
 Sept  
 51

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

PSG

HORTENSE SALLY YBARRA,

Plaintiff,

v.

PATENAUDE & FELIX, A  
 PROFESSIONAL CORPORATION, a  
 California corporation,

Defendants.

Case No.:

CV 11-00324

COMPLAINT

DEMAND FOR JURY TRIAL

15 United States Code § 1692 *et seq.*  
 California Civil Code § 1788 *et seq.*

Plaintiff, HORTENSE SALLY YBARRA (hereinafter "Plaintiff"), based on information and belief and investigation of counsel, except for those allegations which pertain to the named Plaintiff or her attorneys (which are alleged on personal knowledge), hereby makes the following allegations:

**I. INTRODUCTION**

1. This is an action for statutory damages, attorney fees and costs brought by an individual consumer for Defendant's violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.* (hereinafter "RFDCPA") which prohibit debt collectors from engaging in abusive, deceptive and unfair practices.

///

## **II. JURISDICTION**

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

3. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

## **III. VENUE**

4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. Venue is also proper in this judicial district pursuant to 15 U.S.C. § 1692k(d), in that Defendant transacts business in this judicial district and the violations of the FDCPA complained of occurred in this judicial district.

## **IV. INTRADISTRICT ASSIGNMENT**

5. This lawsuit should be assigned to the San Jose Division of this Court because a substantial part of the events or omissions which gave rise to this lawsuit occurred in Santa Clara County.

## **V. PARTIES**

6. Plaintiff, HORTENSE SALLY YBARRA (hereinafter "Plaintiff"), is a natural person residing in Santa Clara County, California. Plaintiff is a "consumer" within the meaning of 15 U.S.C. § 1692a(3) and a "debtor" within the meaning of Cal. Civil Code § 1788.2(h).

7. Defendant, PATENAUDE & FELIX, A PROFESSIONAL CORPORATION, (hereinafter "P&F"), is a California corporation engaged in the business of collecting debts in this state with its principal place of business located at: 4545 Murphy Canyon Road, 3rd Floor, San Diego,

1 California 92123-4363. P&F may be served as follows: Patenaude & Felix, APC, c/o Raymond  
2 Patenaude, Agent for Service of Process, 4545 Murphy Canyon Road, 3rd Floor, San Diego, California  
3 92123-4363. The principal business of P&F is the collection of debts using the mails and telephone,  
4 and P&F regularly attempts to collect debts alleged to be due another. P&F is a "debt collector" within  
5 the meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code § 1788.2(c).  
6

## 7 VI. FACTUAL ALLEGATIONS

8 8. On a date or dates unknown to Plaintiff, Plaintiff is alleged to have incurred a  
9 financial obligation, namely a consumer credit account issued by Capital One Bank and bearing the  
10 account number XXXX-XXXX-XXXX-8567 (hereinafter "the alleged debt"). The alleged debt was  
11 incurred primarily for personal, family or household purposes and is therefore a "debt" as that term is  
12 defined by 15 U.S.C. § 1692a(5) and a "consumer debt" as that term is defined by Cal. Civil Code §  
13 1788.2(f).  
14

15 9. Plaintiff is informed and believes, and thereon alleges that sometime thereafter on a  
16 date unknown to Plaintiff, the alleged debt was consigned, placed or otherwise transferred to Defendant  
17 for collection from Plaintiff.  
18

19 10. Thereafter, Defendant sent a collection letter (Exhibit "1") to Plaintiff which is a  
20 "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).  
21

22 11. The collection letter (Exhibit "1") is dated January 22, 2010.

23 12. The collection letter (Exhibit "1") was the first written communication from  
24 Defendant to Plaintiff in connection with the collection of the alleged debt.

25 13. A true and accurate copy of the collection letter from Defendant to Plaintiff is  
26 attached hereto, marked Exhibit "1," and by this reference is incorporated herein.

27 14. The collection letter (Exhibit "1") was sent in an envelope on which a postage  
28

1 meter stamp dated January 25, 2010, was imprinted.

2 15. Plaintiff is informed and believes, and thereon alleges that Defendant deposited  
3 the envelope containing the collection letter (Exhibit "1") in the United States Mail on or about January  
4 25, 2010.  
5

6 16. The collection letter (Exhibit "1") was sent in an envelope which contained a  
7 window through which information printed on the collection letter could be seen by anyone who  
8 handled the envelope.

9 17. Plaintiff is informed and believes, and thereon alleges that Defendant has sent  
10 standard form collection letters in envelopes which contain a window through which information  
11 printed on the collection letters could be seen by anyone who handled the envelopes as shown by  
12 Exhibit "1" to more than 40 persons in California in the one-year preceding the filing of this Complaint.  
13 Therefore, Plaintiff may seek leave to amend this Complaint to add class allegations at a later date.  
14

## 15 VII. CLAIMS

### 16 **FAIR DEBT COLLECTION PRACTICES ACT**

17 18. Plaintiff brings the first claim for relief against Defendant under the Fair Debt  
18 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*  
19

20 19. Plaintiff incorporates all paragraphs in this Complaint as though fully set forth  
21 herein.

22 20. Plaintiff is a "consumer" as that term is defined by the FDCPA, 15 U.S.C. §  
23 1692a(3).  
24

25 21. Defendant, P&F, is a "debt collector" as that term is defined by the FDCPA, 15  
26 U.S.C. § 1692a(6).  
27

28 22. The financial obligation alleged to be owed by Plaintiff is a "debt" as that term is

1 defined by the FDCPA, 15 U.S.C. § 1692a(5).

2 23. Defendant has violated the FDCPA. The violations include, but are not limited to,  
3 the following:

4 a. Defendant communicated with third parties, in violation of 15 U.S.C. §  
5 1692b;

6 b. Defendant communicated with third parties in connection with the  
7 collection of a debt from Plaintiff without Plaintiff's prior consent or the express permission of a  
8 court of competent jurisdiction, in violation of 15 U.S.C. § 1692c(b);

9 c. Defendant's display and publication of Plaintiff's personal financial  
10 information to third parties in connection with the collection of a debt from Plaintiff is conduct  
11 the natural consequence of which is to harass, oppress or abuse Plaintiff, in violation of 15  
12 U.S.C. § 1692d;

13 d. Defendant published Plaintiff's personal financial information to third  
14 parties, in violation of 15 U.S.C. § 1692d(3); and

15 e. Defendant's display and publication of Plaintiff's personal financial  
16 information to third parties in connection with the collection of a debt from Plaintiff is unfair or  
17 unconscionable, in violation of 15 U.S.C. § 1692f.

18 24. Defendant's acts as described above were done intentionally with the purpose of  
19 coercing Plaintiff to pay the alleged debt.

20 25. As a result of Defendant's violations of the FDCPA, Plaintiff is entitled to an  
21 award of statutory damages, costs and reasonable attorneys fees, pursuant to 15 U.S.C. § 1692k.

22  
23  
24  
25  
26 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

27 26. Plaintiff brings the second claim for relief against Defendant under the Rosenthal  
28

1 Fair Debt Collection Practices Act ("RFDCPA"), California Civil Code §§ 1788-1788.33.

2 27. Plaintiff incorporates all paragraphs in this Complaint as though fully set forth  
3 herein.

4 28. Plaintiff is a "debtor" as that term is defined by the RFDCPA, Cal. Civil Code §  
5 1788.2(h).

6 29. Defendant, P&F, is a "debt collector" as that term is defined by the RFDCPA, Cal.  
7 Civil Code § 1788.2(c).

8 30. The financial obligation alleged to be owed by Plaintiff is a "consumer debt" as  
9 that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(f).

10 31. Defendant has violated the RFDCPA. The violations include, but are not limited  
11 to, the following:

12 a. Defendant communicated with third parties, in violation of Cal. Civil Code  
13 §§ 1788.12(a) and 1788.17;<sup>1</sup>

14 b. Defendant communicated with third parties in connection with the  
15 collection of a debt from Plaintiff without Plaintiff's prior consent or the express permission of a  
16 court of competent jurisdiction, in violation of Cal. Civil Code §§ 1788.12(a) and 1788.17;<sup>2</sup>

17 c. Defendant's publication of Plaintiff's personal financial information to third  
18 parties in connection with the collection of a debt from Plaintiff is conduct the natural  
19 consequence of which is to harass, oppress or abuse Plaintiff, in violation of Cal. Civil Code §§  
20 1788.12(a) and 1788.17;<sup>3</sup>

21 d. Defendant published Plaintiff's personal financial information to third  
22 parties, in violation of Cal. Civil Code §§ 1788.12(a) and 1788.17;<sup>4</sup> and

23 <sup>1</sup> 15 U.S.C. § 1692b.

24 <sup>2</sup> 15 U.S.C. § 1692c(b).

25 <sup>3</sup> 15 U.S.C. § 1692d.

26 <sup>4</sup> 15 U.S.C. § 1692d(3).



e. Defendant's publication of Plaintiff's personal financial information to third parties in connection with the collection of a debt from Plaintiff is unfair or unconscionable, in violation of Cal. Civil Code §§ 1788.12(a) and 1788.17.<sup>5</sup>

32. Defendant's acts as described above were done willfully and knowingly with the purpose of coercing Plaintiff to pay the alleged debt, within the meaning of Cal. Civil Code § 1788.30(b).

33. As a result of Defendant's willful and knowing violations of the RFDCPA, Plaintiff is entitled to an award of a statutory penalty in an amount not less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000) against each Defendant, pursuant to Cal. Civil Code § 1788.30(b).

34. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to an award of statutory damages in an amount not exceeding \$1,000 against each Defendant, pursuant to Cal. Civil Code § 1788.17.<sup>6</sup>

35. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to an award of her reasonable attorney's fees and costs pursuant to Cal. Civil Code §§ 1788.30(c) and 1788.17.<sup>7</sup>

36. Pursuant to Cal. Civil Code § 1788.32, the remedies provided under the RFDCPA are intended to be cumulative and in addition to any other procedures, rights or remedies that the Plaintiff may have under any other provision of law.

#### **VIII. REQUEST FOR RELIEF**

Plaintiff requests that this Court:

a) Assume jurisdiction in this proceeding;

<sup>5</sup> 15 U.S.C. § 1692f.

<sup>6</sup> 15 U.S.C. § 1692k(a)(2)(A).

<sup>7</sup> 15 U.S.C. § 1692k(a)(3).

- b) Declare that Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692b, 1692c(b), 1692d, 1692d(3) and 1692f;
- c) Declare that Defendant violated the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§ 1788.12(a) and 1788.17;
- d) Award Plaintiff statutory damages in an amount not exceeding \$1,000, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- e) Award Plaintiff a statutory penalty in an amount not less than \$100 nor greater than \$1,000 against each Defendant, pursuant to Cal. Civil Code § 1788.30(b);
- f) Award Plaintiff statutory damages in an amount not exceeding \$1,000 against each Defendant, pursuant to Cal. Civil Code § 1788.17;<sup>8</sup>
- g) Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.17<sup>9</sup> and 1788.30(c); and
- h) Award Plaintiff such other and further relief as may be just and proper.

CONSUMER LAW CENTER, INC.

By: /s/ Fred W. Schwinn

Fred W. Schwinn (SBN 225575)

CONSUMER LAW CENTER, INC.

12 South First Street, Suite 1014

San Jose, California 95113-2418

Telephone Number: (408) 294-6100

Facsimile Number: (408) 294-6190

Email Address: fred.schwinn@sjconsumerlaw.com

Attorney for Plaintiff

HORTENSE SALLY YBARRA

<sup>8</sup> 15 U.S.C. § 1692k(a)(2)(A).

<sup>9</sup> 15 U.S.C. § 1692k(a)(3).



**CERTIFICATION PURSUANT TO CIVIL L.R. 3-16**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

/s/ Fred W. Schwinn  
Fred W. Schwinn, Esq.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, HORTENSE SALLY YBARRA, hereby demands a trial by jury of all triable issues of fact in the above-captioned case.

/s/ Fred W. Schwinn  
Fred W. Schwinn, Esq.

LAW OFFICES OF

**PATENAUE & FELIX, A.P.C.**

A PROFESSIONAL LAW CORPORATION

4545 MURPHY CANYON RD., 3RD FL  
SAN DIEGO, CALIFORNIA 92123  
TEL (858) 244-7600 (800) 832-7675  
FAX (858) 836-0318

213 EAST MAIN STREET  
CARNEGIE, PENNSYLVANIA 15106  
TEL (412) 429-7675 (800) 832-7675  
FAX (412) 429-7670

1771 EAST FLAMINGO RD., STE. 112A  
LAS VEGAS, NEVADA 89119  
TEL (702) 952-2032 (800) 867-3092  
FAX (702) 992-8286

522 SW 5th AVENUE, STE. 723  
PORTLAND, OREGON 97204  
TEL (503) 208-2676 (800) 832-7675

4727 44th AVENUE, STE. 103  
SEATTLE, WASHINGTON 98116  
TEL (800) 832-7675 (206) 906-9694

January 22, 2010

364991/400573

HORTENSE S YBARRA  
1496 ALMADEN RD APT 140  
SAN JOSE CA 95125-1280

RE: Our Client: CAPITAL ONE BANK (759)  
Account Number: 5178057310168567  
Our File Number: 10-9810  
Balance Due: \$1,451.50

Dear HORTENSE S YBARRA:

Please be advised that the above-referenced debt has been assigned to this firm to initiate collection efforts regarding your delinquent outstanding balance to our client.

In the event that legal action is pursued and judgment is ultimately obtained against you, the judgment may include all court costs, prejudgment interest and attorney's fees in addition to the principal amount currently owed. If you wish to eliminate further collection action, please contact us at (800) 832-7675.

Unless you notify this office within THIRTY (30) days of receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will assume this debt is valid.

If you notify this office in writing within THIRTY (30) days of receiving this notice that this debt, or any portion thereof, is disputed, this office will obtain verification of the debt, or a copy of a judgment against you, and mail you a copy of such verification or judgment. Further, if you make a written request upon this office within THIRTY (30) days of receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

Very truly yours,

**LAW OFFICE OF PATENAUE & FELIX**

THIS COMMUNICATION IS FROM A DEBT COLLECTOR

PF\_03 Ltr Initial Demand

P&F File No. 10-9810



**PATENAUE & FELIX, A.P.C.**  
A PROFESSIONAL LAW CORPORATION

4545 MURPHY CANYON ROAD, THIRD FLOOR  
SAN DIEGO, CA 92123

**RETURN SERVICE REQUESTED**

HORTENSE S YBARRA  
1496 ALMADEN RD APT 140  
SAN JOSE CA 95125-1280

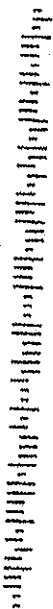
RE: Our Client:

**PERSONAL AND CONFIDENTIAL**

364991/400573

CAPITAL ONE BANK (TS)

ACCOUNT 35125



DEPOSITED  
FIRST  
CLASS



ZIP 92123  
01TD11607619

Hasler FIRST-CLASS MAIL AUTO  
01/25/2010  
**US Postage** **\$00.382**